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## **Formal Bargaining in the Prison: In Search of A New Organizational Model**

by A. F. Rutherford

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In the last few years it has become somewhat unfashionable to be associated with the problems of prison organization. The zealous optimism of those earlier generations which drew up plans for model prisons would be hard to find today. In addition to the increased awareness of the complex organizational issues involved there is a widespread unease about incarceration in both mental health and criminal justice systems. Reflected in this unease is a growing dismay concerning post-discharge behaviour combined with a concern about the impact of the experience of incarceration upon the individual's self-definition and upon his role in society. Goffman's *Asylums*,<sup>1</sup> appearing in 1961, found an immediate reception. The book became part of a trend, especially in the United States, that led to a view of the criminal justice and social welfare apparatus not as a counter to deviance but as part of the problem, if not its very basis. Of greater practical significance in current challenges to the legitimacy of imprisonment is imprisonment's very high cost. The success of the California probation subsidy scheme in reducing committal rates and closing penal institutions has depended on considerable political support for the savings in State expenditure that the scheme has produced. Despite these developments it would appear that the prison will remain a significant part of the social control apparatus of most countries for many years to come.

While acknowledging the importance of finding alternatives to imprisonment, it is also essential that the task of developing more appropriate organi-

zational models is not neglected. Prison organizations have been remarkably inflexible in developing structures suited to the resolution of conflict and to the goal of inmate betterment. It is the argument of this paper that the traditional model, the Caste-Prescriptive Prison, is in need of radical change. Its structure has not been much affected by the arrival of the treatment ideology, and the role position of the inmate has remained that of the passive and subordinate recipient. Attempts to develop an alternative model, based upon milieu therapy, will be reviewed, some suggestive leads will be pursued, and finally the outline of a model, based upon formal bargaining, will be presented.

### **The Caste-Prescriptive Model**

This model characterizes the bureaucratic and mechanistic prison within which staff and inmate behaviour is subject to a large number of rules. There is a sharply defined staff hierarchy, and all staff enjoy an echelon authority over those in the lowest caste group — the inmates.

The general goals of the prison are control, maintenance and treatment. Control refers to all those activities that hold the prisoner in a manner consis-

tent with the limitations set by groups within the environment. In its extreme form control implies placing the inmate in a position where his actions and attitudes can be disregarded. Maintenance refers to all those activities concerned with getting the organization through the day. Treatment (or to use a less prescriptive term, inmate betterment) has to do with activities that are intended to reduce the chances of recidivism on discharge. It is a central argument of this paper that the failure of viable treatment approaches to emerge is a consequence of the very organizational context within which they have been tried.

The control goal dominates prison organization because:

- a) the various punitive goals that imprisonment serves are merged into the control structure;
- b) prison administrators tend to be sensitive to public opinion and this leads to "institutional prudence",<sup>2</sup>
- c) control and maintenance goals involve present rather than future events, they are more visible and their effects easier to measure than the effects of treatment;
- d) the control goals reflect the absence of trust of the inmate group by the staff. The inmate's record of offending is often assumed to be evidence of a general untrustworthiness, and his reported failures cast doubt upon his ability to make wise decisions. As in other caste structured social systems there is a widespread fear by staff of being "conned" by inmates. One reformatory administrator warned his new staff in these terms:

"As soon as you think a boy's acting nice and shouldn't be in here, watch out. That should be the warning. Then you will know you will have trouble. That nice little boy will be the one to give you all the trouble when you're not looking."<sup>3</sup>

The control goal is often equated with the denial or reduction of inmate initiatives. McCleery writes that control rests upon the ruling class definition of the roles of ruler and ruled and that "effective denial of freedom involves control over perception of such opportunities to act as inevitably exist, control over the means and instruments of action, control over the premises of action and control over the will to act."<sup>4</sup> This implies a monotonous routine within which the inmate is expected to fit and a considerable amount of monitoring by staff to ensure that the routine is adhered to. McCleery sums it up:

"The heart of custodial controls in traditional prisons lies in the regimentation, routines and rituals of domination which bend the subjects into a posture of silent awe and unthinking acceptance."<sup>5</sup>

Supporting these routines and rituals is an enormous range of control technologies including placement within a segregation unit and transfer to another prison.

The function of caste as a control device within specific social systems is widely reported.<sup>6</sup> Humility and lack of direct demands are the expected behaviour patterns of low caste people in these social systems. A caste system also tightly controls members

of the high caste in that if they allow members of the low caste to forget their place they would themselves become the target. These and other features of a caste system are found within most prisons. A further characteristic is the practice of staff and inmates stereotyping each other as inferior and childish. Cressey has argued that this serves to minimize staff decision-making about inmate conduct for "if guards are inferior inmates will not readily approach them with requests that require decision-making, and if offenders are inferior, they do not deserve the privilege which special decision-making would involve."<sup>7</sup> He goes on to suggest that staff have few personal skills for "their duty in the organization is primarily one of being present, and by their presence symbolizing a show of force."<sup>8</sup> In a situation in which their own autonomy is low it is expected that staff will focus on the minimization of inmate initiative. In addition they may well consider that they have sacrificed much in the way of personal autonomy in exchange for security by joining a prison service, and that inmates have put aside any claim to autonomy by becoming involved in crime.<sup>9</sup>

The divisions within the lower caste structure – the informal inmate social system – has been the most researched aspect of prison organization. The research was provoked by a debate as to whether the inmate culture is imported or whether it represents a functional response to the features of imprisonment. Early studies, such as Donald Clemmer's classic *The Prison Community*<sup>10</sup> which was based on fieldwork undertaken in the early 1930s, took a rather eclectic position. With the revival of sociological interest in the prison in the early 1950s (in part a result of a wave of prison riots across the United States) the functional explanation was stressed in most of the reported studies.<sup>11</sup> The functional explanation with its focus on the various adaptations to what Sykes called "the pains of imprisonment" was soon to come under challenge from those who stressed the importance of features that were imported into the prison from the environment. A key paper by Irwin and Cressey prepared the way for empirical research results, in particular from the Scandinavian Prison Study.<sup>12</sup> Contemporary studies are more inclined to lay stress on the inmate's own perception of his situation. Stanton Wheeler, for example, has argued that the prisoner is concerned with issues affecting his identity on discharge rather than what it is within the institutional setting.

"It is the social definition of the prison in society, rather than the social status of the inmate within the prison, that appears to be most relevant for the future life and career of prison inmates."<sup>13</sup>

The focus of John Irwin's latest study is the criminal career of which imprisonment forms only a part.<sup>14</sup>

There is certainly no general finding by researchers of the inmate solidarity in opposition to prison authorities that those with a functional explanation were inclined to take for granted. In his study of a psychiatric prison in Norway, Thomas Mathiesen found instead an individual inmate response which he calls censoriousness, the disparaging of staff for falling

below their own standards.<sup>15</sup> A recently published study of a medium security prison in California explains the absence of inmate solidarity in part as a function of classification and transfer procedures within a large department of corrections and perhaps also as a function of a large-scale use of group counselling.<sup>16</sup>

An important aspect of the staff's interaction with the informal inmate world is the variety of informal bargaining arrangements that occur. This complex and dynamic network of informal arrangements and bargains serve goals of control and maintenance. Several studies have pointed to staff strategies which have aided in developing and supporting an inmate elite with which staff is then able to bargain. McCleery comments that the purpose behind these arrangements is the mutual desire for peaceful and orderly conditions within which each group enjoyed its position of power. In an observational study of a cottage unit in a private reformatory, Howard Polsky has provided an outline of the phases of an accommodatory process between cottage parents and the inmate elite. There was the period of reconnoitering and testing strengths, a transitional stage when certain orderly cottage routines were insisted on in exchange for an acceptance by the cottage parents of the inmate hierarchy. In the third phase the cottage parents took over, but this had to be done in a way that meshed in with the boys' own authoritarian organization.<sup>17</sup>

The orientation of both staff and the inmate elite tends to be conservative with a high premium placed on the *status quo*. In his study of a military prison Richard Cloward suggests that accommodations are focused on material goods, power and prestige. His central thesis is that illegitimate opportunity structures are created to meet these ends and that the official system "plays a vital role in regulating the type of inmate roles that emerge, the social functions they serve and the relationships between them."<sup>18</sup> He argues further:

"Accommodation involves reciprocal expectations and obligations. If either party to the obligation fails to fulfill his part of the bargain the relationship is likely to deteriorate and break down. Each exercises a power over the other."<sup>19</sup>

Inmates in the elite "stand between the inmate system and the formal system, bridging them and binding them together. They mediate and modify the diverse pressures emanating from each system. They bring order to an otherwise strife-full situation."<sup>20</sup> Cloward concludes that the inmate elite are the most important source of social control in the prison.

Although these exchanges and reciprocal relationships can achieve a certain level of control, or at least a surface placidity, they are inherently unstable. In his study of a federal prison, Ward found that "the reciprocity norm evident in both officer and inmate value systems is that the payoff is contingent upon benefits received. However, the inflationary spiral creates a continuous pressure for more benefits as any specific benefit loses value the more it becomes customary through regular usage."<sup>21</sup> Sykes, McCleery and other students of the prison have drawn attention to the disturbing consequences that

may follow the arrival of a reforming management in a situation where there has been some degree of stability in the informal bargaining arrangements. At a more official level there are a variety of bargaining arrangements focused around the pay-offs of length of time to be served and ease in living conditions. Sentences of an indeterminate or semi-indeterminate period of time are often important instruments for control, as are the wide range of living styles within the prison formalized by "honor" systems.

There has been virtually no challenge within penal organizations to what might be called the prescriptive assumption. The assumption is that the inmate will benefit from staff interventions to put him right. The actual definitions used have varied from the crudely punitive to the highly sophisticated, but the organizational role of the inmate has remained unchanged. The inmate has continued to be a passive recipient who plays virtually no part in shaping the definitions that are made about him or the activities that relate to him. The prescriptive assumption has survived despite the fact that no technology has been developed to support it. With a spate of recent research showing a nil result in controlled comparative studies, the era of Waiting for the Clinical Technology may be coming to an end.<sup>22</sup>

In organizational terms, with treatment approaches to the inmate confirming his low status position, it is not surprising to find that the treatment ideology has left the modern prison virtually unchanged in its structure. LaMar Empey has commented:

"The statuses of professional members of the organization, their helping roles, the powers they have to manipulate offenders depend upon the offender remaining in a subordinate position"<sup>23</sup>

The analytical use of a continuum running from a treatment to a custodial orientation has aided in the masking of basic similarities in structure between one organization and another. Many observers have, however, drawn attention to the phenomenon of displacement, whereby treatment methods are used to serve control goals. Personnel who may have been attracted into prison work in the first place because of a desire to apply professional skills in a treatment direction find that their time may well be spent on matters relating to control.<sup>24</sup>

One of the themes of modern penology has been the search for delinquent typologies and people-changing technologies to match. The key factor here, from an organizational perspective, is the low bargaining position of the inmate with his very limited opportunity to play a significant part in the actual treatment situation as it affects him. This might be contrasted to the situation of a fee-paying patient meeting his doctor to discuss a psychosomatic complaint. Balint has pointed out that despite what he calls the apostolic mission of the doctor, even he must take into account the offerings of the patient, and this means that eventually a negotiated definition of the illness is reached.<sup>25</sup> This is a very different situation from the minimal participation in diagnosis and treatment activities in the prison. The application within the penal setting of I-Level (Interpersonal

Maturity Levels) provides a recent example of minimal participation.<sup>26</sup> There have very occasionally been instances of inmates being involved within a contract-making situation as to their treatment program but such contracts have been limited in scope and depth.<sup>27</sup>

In the absence of the emergence of a successful treatment technology there may be more attention given to structure rather than to technology, and there may in consequence be a greater tendency to look inside the prison, to staff and inmates, for suggestions as to how time might be most effectively spent. The focus may well come to be on new structural arrangements that would make for more meaningful activities within the prison and for the development of new linkages with the environment.

### The Happy-Family-Collaborative Model

One hundred and fifty years ago William Roscoe suggested that "criminals should form a kind of community and should become in fact the reformers of each other."<sup>28</sup> It is however, only in the last two or three decades that there have been serious attempts to implement milieu therapy or similar approaches within the prison. These approaches towards developing a collaborative model were important for they represented a clear attempt to move away from the Caste-Prescriptive structure. Milieu therapy is a very generic term, but in essence it refers to a belief that all interactions between people within the organization have a therapeutic potential. Most of the pioneer work was done within mental hospitals and within a variety of residential settings for children.<sup>29</sup> Democratic values are stressed, and milieu therapy has close links with the human relations school and with psychoanalysis. The developments that have occurred have generally been the results of field-work, and there are only a few instances of systematic work in relation to theoretical design.<sup>30</sup> Milieu therapy within the prison setting has taken a wide variety of forms some of which follow directly from the work of Maxwell Jones:<sup>31</sup> large group meetings and guided group interaction.<sup>32</sup> The report of the President's Commission on Law Enforcement and Administration of Justice<sup>33</sup> states:

"The collaborative institution is structured around the partnership of all inmates and staff members in the process of rehabilitation."

Although the report indicates that many prisons are moving in this direction there are very few reports of systematic structural change.<sup>34</sup>

These developments relating to milieu therapy in the prison have been important in a number of respects:

a) in providing challenges to the prescriptive assumption;

b) in drawing attention to many of the structural problems of the caste-prescriptive model (for example, the communication blockages within the organization);

c) in challenging the notion that treatment is limited to specific events or relationships;

d) in demonstrating that there are many untapped resources within staff and inmate groups;

e) in drawing attention to the significance of organizational role definition for the inmate and staff. Jones called for a drastic revision in existing staff and patient role relationships. Studt has written, "Seldom does the correctional organization manage to provide a basic role for the offenders it serves that defines them as persons of worth who have something to contribute to their society."<sup>35</sup> Milieu therapy developments have prompted considerable discussion about new forms of relationship between staff and inmates;<sup>36</sup>

f) in developing, to some extent at least, a pro-change value system.

The collaborative model does however contain a number of serious limitations. First, there has been insufficient attention paid to the dominant operative goal of control. This has been as true of the mental hospital as of the prison, and in one study the authors found:

"It is clear from the records that staff members (especially the director) used strategies in patient-staff meetings that maintained their power ... these strategies permitted a moralistic application of the therapeutic ideology which assumes staff dominance without seeming to do other than ignore and explore."<sup>37</sup>

Second, the organization is often highly unstable, oscillating from periods of relaxation to tight control. Third, there is a tendency for the organization to be inward — rather than outward — looking. Fourth, inmate autonomy may be further reduced by participation in the therapeutic community. Jerome Frank, in his writings on psychotherapy, has suggested that it is more difficult to mobilize resistance — to a collaborative than a directive therapist:

"By failing to take a definite position the therapist deprives the patient of a target against which he mobilizes his opposition."<sup>38</sup>

Clear role distinctions would appear to be necessary both for the efficient functioning of the organization and in order to protect the inmate from losses in autonomy. One student of organizations has written:

"...without some organized protection of the client's autonomy neither the role of the professional nor that of the client would be acceptable or permanent."<sup>39</sup>

This threat to personal autonomy within the milieu therapy situation is brilliantly conveyed in Ken Kesey's novel *One Flew Over the Cuckoo's Nest*.<sup>40</sup> It is of interest to note that in a recent survey of prisons in Europe it was found that in the six institutions that were described as having a milieu therapy base there were no inmate committees or other forms of formal inmate representation.<sup>41</sup>

Those who adhere to the collaborative model have been insufficiently aware of the organizational context. Their view of the prison as a unitary institution would appear to be particularly inappropriate. Alan Fox has been critical of those who have viewed

the industrial organization in this way:

"If the enterprise were indeed unified by common purpose in a manner which made the team a valid analogy, then rallying cries would of course be in order, as would moral denunciations in appropriate circumstances. But if the enterprise is not of this structural nature then team mythology may not only be irrelevant but positively harmful."<sup>42</sup> Fox's suggestion that a pluralistic frame of reference would be more to the point is also true of the prison organization in modern Western society. In a further comment on the industrial organization Fox writes:

"...management has to face up to the fact that there are other sources of leadership, other focuses of loyalty within the social system it governs, and that it is with these that management must share its decision-making."<sup>43</sup>

## The Formal Bargaining Model

If the pluralistic frame of reference is valid for the prison it follows that an organizational model that allows for formal bargaining arrangements is worthy of exploration. Clearly there would be dangers in following the industrial analogies too far, and such issues as recognition, legitimacy and rights have to be seen within a different context. The industrial situation can however serve a useful suggestive function. One of the few people to venture into this field is W. F. Whyte in his critical analysis of the milieu therapy basis of the Henderson Hospital. Whyte has written:

"A labor relations model is superior to the community democracy model... for it allows one to deal realistically with authority as well as with participation."<sup>44</sup>

Whyte had been much impressed by Leighton's study of the Japanese-American relocation camp at Poston, Arizona, where there had been a gradual move from a pretended democracy to collective bargaining following inmate strikes.<sup>45</sup> The outlines of a formal bargaining model presented here represent an attempt at developing a workable alternative to the caste-prescriptive and collaborative models.

The rationale for the formal bargaining model consists of:

- a) the existence of a number of informal bargaining bases that relate to the organization's goals of control, maintenance and betterment of inmates. The likelihood is that staff are dependent upon inmate cooperation (if not active participation) for the achievement of any one of these goals;
- b) the resources of the prison and its environment are more likely to be put to full use;
- c) a higher level of inmate and staff commitment to inmate betterment will be achieved as a result of shared decision-making;
- d) there will be a greater overall clarification of organizational issues and less opportunity for collusion or double bind to occur;
- e) inmate needs can be met formally and openly;

f) conflict will be institutionalized rather than emerging in violent eruptions.

Among the key theoretical issues are inmate bargaining power and the granting of legitimacy by other groups to collective actions by inmates that place the inmates in a position from which they can openly negotiate. It is not possible to make generalizations about inmate bargaining power. Among the determinants of the strength of bargaining power are the level of dependency of the organization on inmate cooperation to realize its goals and the degree of inmate solidarity. These two issues are inter-connected. Thomas Mathiesen, a Norwegian sociologist with a special interest in this area, has argued that the essentially non-contributory role of the inmate leads to a situation where there is a general pointlessness to solidarity. Mathiesen comments,

"The feeling of not being unable to contribute leads not only to the view that one cannot threaten the system; it also leads to the feeling that one cannot actively improve the system."<sup>46</sup>

Mathiesen, however, appears to underestimate the significance of the move towards industrialized prisons, the high level of inmate participation involved in meeting the maintenance goal, the sensitivity of prison staff and penal agencies to internal disorder and an increasing recognition that the prescriptive approaches have been unsuccessful. Further factors of vital importance are the coalitions and alliances with groups that are external to the prison. Bargaining arrangements within the prison will not exist in a vacuum but are likely to be closely intertwined with a variety of what Lloyd Ohlin calls correctional interest groups. Of crucial significance in the creation of bargaining bases will be the role of third parties, whether in the form of legislation, court rulings or aspects of public opinion.

Some recent developments in Sweden underline the significance of the external contacts. In common with other Scandinavian countries Sweden has during the last three years seen the growth of inmate unions which are closely allied to student and radical groups in the community. Inmate councils in Swedish prisons have affiliations to KRUM, a national organization that has brought together in its membership ex-prisoners and academics and which has established positive links with the mass media. A series of sit-down and hunger strikes began in 1969 in many Swedish prisons and led to central negotiations taking place between the National Correctional Administration, the staff unions, representatives of inmate councils in the prisons and KRUM. The Administration has not challenged the inmates' right to form inmate councils in each prison and for these to keep in touch with each other. The Director General of the National Correctional Administration in a recent survey of these developments commented:

"Regardless of what associations might exist among the inmates, it was seen as important, however, to find new organizational forms for the consultation process through which the various personnel categories and inmates could feel shared responsibility for the efforts."

Later in the same paper he noted that the inmate councils settled issues which otherwise would have caused unrest or confrontation. He concluded that the negotiating machinery established has "placed on equal footing the delegates of the country's 5000 prisoners on the one side and representatives of the correctional authorities and personnel organizations on the other."<sup>47</sup> Swedish public opinion has clearly played an instrumental role in enabling the authorities to recognize the right of prisoners to negotiate about prison conditions. The civil status and rights of those imprisoned will be strongly associated with the manner in which recognition and legitimacy is achieved. Chamberlain has underlined the essence of collective bargaining within industry:

"The great change which takes place is the creation of two organizations, each of which in one sense is independent of the other but are likewise mutually dependent, so that for each the achievement of its own function is dependent upon the other."<sup>48</sup>

The outlines of the model presented in this paper are limited to aspects arising from an internal perspective of the organization. The variety of links with the environment, including the department of corrections are not considered here. The model emerges as a result of viewing the prison within a pluralistic frame of reference which acknowledges that there are several sources of power and distinct interest groups within the prison. Conflict is recognized as inevitable, but not beyond the possibility of institutionalization. Inmate autonomy with certain areas is granted legitimacy. The Formal Bargaining model focuses on staff-inmate negotiations in relation to the ease and the use of time. The model is not concerned with the length of time to be served. It is assumed that this is predetermined externally and is not negotiable.

## The Ease of Time

Many of the exchanges that take place will be concerned with matters pertaining to living conditions within the prison. In Walton and McKersie's terminology this would fall under the category of "distributive" social negotiations.<sup>49</sup> Here the bargaining is concerned with the distribution of resources and with the possibilities of increasing the total volume of resources available. Formal negotiating machinery organized around living units but providing for central agreements which affect the prison as a whole will be necessary. Highly centralized procedures are unlikely, on the whole, to be appropriate, and the rather less formal arrangements within the living unit will be of greater significance. Informal bargaining is likely to continue to be of considerable importance. The focus of the negotiations conducted in Sweden has been on the ease of time. The model assumes that staff assumptions about inmate use of time will not be

heavily built into the organizational structure. The organization remains flexible enough to allow for negotiation about how time might be used. That is not to say that management and staff should not have views but that these views should not be given unchallenged precedence. The negotiations in relation to the use of time will, in Walton and McKersie's terms, be of mainly an "integrative" nature, together with elements of what they call "attitudinal structuring."<sup>50</sup> Management and staff are likely to give some priority to maintenance and production goals of the prison. Inmates may well focus on leisure uses of time. As far as using the time in ways that might enhance inmate betterment, especially in relation to the improvement of the chances of avoiding further recidivism, there are likely to be a number of conflicting assumptions. The bargaining will attempt to reach normative consensus.

The formal process adopted within any one prison will require flexibility so that it can be quickly adapted to changing circumstances. The nature of the relationship between inmate and staff groups cannot be determined by fiat. Within the prison the relationship will have a dynamic quality and from time to time will reflect elements of conflict, accommodation, collusion and cooperation. The bargaining relationships will pass through states of development and the inevitable oscillations will reflect attempts at conflict and joint goal-planning. Neither the relationships nor the agreements are likely to be static for long. Wellington has written:

"A collective bargaining agreement (however) is one episode of a continuous joint history of a firm and union. It is a temporary calm in a restless shifting relationship."<sup>51</sup>

The negotiating arrangements in relation to the ease and use of time will have to be continually adapted with local and central arrangements varying in their importance within the organization. It might, for example, be that matters relating to use of time will be settled by cohort groups of inmates with certain staff, and that through separate procedures inmate representatives would take part in determining matters relating to living conditions.

The Formal Bargaining model, whatever its specific shape, would appear to provide a workable alternative to the organizational models reviewed earlier. In particular the model provides for:

- a) clarity as to what the organizational issues are;
- b) conflict resolution procedures of an adaptable nature which are built into the organization's structure;
- c) the opportunity for commitment to develop by both inmate and staff groups to betterment programs where there has been a joint decision on starting definitions, and a joint endeavour to carry the agreement through;
- d) a more efficient use of resources;
- e) a likelihood that there will be increasing linkages with parts of the environment conducive to keeping the inmate out of prison after his release;
- f) protection of areas of autonomy through formal arrangements for the various groups within the prison;

g) the emergence of a new form of relationship between staff and inmates that replaces that associated with a caste society or a "happy family."

The model is consistent with an increasingly pluralistic society, and although it might appear to imply a rather unusual process of power devolution, it would seem likely that there will be increased demands by various groups within and external to the prison for a share of decision-making. These demands are likely to find expression in a complex of alliances between prisoners and external groups, with an increasing interest taken by the courts in matters within the prison. By providing for both the ease and use of time the model is something of a synthesis of penal reform and penal practice. While it does not challenge the basic issue of imprisonment itself, its organizational implications would make a profound impact on the prison as existing in contemporary Western society.



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